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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 PATRICIO JIMENEZ, et al.,

4 Plaintiffs,

5 v.

14 Civ. 2994 (SAS)

6 THE CITY OF NEW YORK, et al.,,

7 Defendants.

8 -----x

9 New York, N.Y.
10 December 15, 2014
3:05 p.m.

11 Before:

12 HON. SHIRA A. SCHEINDLIN,

13 District Judge

14 APPEARANCES

15 GREGORY MOUTON
16 Attorney for Plaintiffs

17 NEW YORK CITY LAW DEPARTMENT
18 Attorneys for City Defendants
19 BY: TOBIAS ZIMMERMAN

20 LESTER SCHWAB KATZ & DWYER
21 Attorneys for Mt. Sinai Defendants
22 BY: THOMAS A. CATALANO
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1 (In open court)

2 THE COURT: I have three letters, all dated December
3 3, and then one letter dated December 8. I have a letter from
4 the city, Mr. Zimmerman.

5 I have a letter from Mount Sinai Hospital and Mount
6 Sinai Hospital Group, from Mr. Catalano. They are both dated
7 the 3rd.

8 And then there is a letter from Mr. Mouton. I think
9 it's misdated. It's dated the 2nd, but I think it's meant to
10 be dated the 3rd, because it responds to the other letters, and
11 it's docketed on the 3rd. So I think it's meant to be dated
12 the 3rd.

13 Then I have a letter dated December 8, from
14 Mr. Mouton -- actually, the second letter, of the 8th, responds
15 to the Mount Sinai's letter, and his letter of the 3rd responds
16 to the City's letter. That's why there's two letters from
17 plaintiffs' attorney, and one each from each of the defendant
18 groups.

19 The letter from the City and also from the Mount Sinai
20 defendants asks for two forms of relief. It says that the
21 third amended complaint essentially can't stand and shouldn't
22 be permitted to stand and it was filed inappropriately without
23 permission of the Court and beyond what the court had said it
24 would allow.

25 Then it also asked for sanctions against the

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1 plaintiffs' attorney, Mr. Mouton, for going ahead with this
2 filing. Then the hospital's letter agrees and says the third
3 amended complaint can't stand against the hospital defendants,
4 and they should be dismissed.

5 And then Mr. Mouton's reply disagrees obviously with
6 both of the two letters and explains why he thinks it was
7 proper to file the third amended complaint, why the city is a
8 proper defendant in this lawsuit, why Harlem Hospital Center is
9 a proper party in this lawsuit, and then, finally, why the
10 Mount Sinai defendants are proper defendants in this lawsuit.

11 That is, I think, a fair summary of the four letters.
12 But there's some disconnect here, I have to say, because it
13 does feel as if the Court's first opinion and order, which was
14 a lot of work, essentially has been ignored, and so has the
15 conference. It seems like plaintiffs' attorney is just
16 determined to continue the lawsuit on behalf of Maribel
17 Jimenez, even if there is really no legal ground to stand on
18 and really no jurisdiction.

19 So, Mr. Mouton, I think the ball is in your court to
20 explain to me why some of the arguments made in the defendants'
21 letters aren't correct.

22 For example, in the letter from Mr. Catalano, he says,
23 among other things, Title VI doesn't even have a private right
24 of action based upon language discrimination, and there's no
25 reason that the parallel section of the Affordable Care Act

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1 would permit a private right of action either.

2 Then he says that the Mount Sinai SAVI -- I don't know
3 the acronym, but the Mt. Sinai SAVI program doesn't receive
4 federal financial assistance anyway, which is required under
5 the Title VI claim.

6 As you wrote in your letter, it says, Title VI,
7 Section 601 says no person in the U.S. shall on the ground of
8 race, color, or national origin be excluded from participation
9 in or be subjected to discrimination under any program or
10 activity receiving federal financial assistance.

11 Then Mr. Catalano says, well, this program is not
12 receiving federal financial assistance. So that's one ground
13 to say that the Mount Sinai defendants shouldn't be there.

14 But then he points out, and we went through all this
15 on the motion, that in fact there was an interpreter, a
16 volunteer interpreter present. I've already addressed that in
17 the first motion.

18 If the person stayed two minutes or ten minutes, it is
19 nothing to do with Mount Sinai. It's not their problem. So I
20 don't see why the Mount Sinai defendants are being brought
21 back, and I don't think that is what I allowed.

22 When I allowed leave to amend I was very specific as
23 to the narrow permission there. It talked about the negligent
24 supervision claim, the negligent hiring claim, and then at the
25 last conference there was a question about federal jurisdiction

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1 anyway, and the city attorney pointed out that Maribel's claims
2 were state claims only, and there wasn't a basis to bring her
3 claims here. So you have invented this idea of the Title VI
4 claim and the Affordable Care Act claim, which Mr. Catalano
5 says has no private right of action.

6 I'm really confused and I am not anxious to go through
7 another round of briefing again and another motion and
8 decision, which will probably come out the same way. I don't
9 think it's fair to any of us that is, you wasting your time,
10 the defense counsel wasting their time, and, worst of all, you
11 are going to waste the Court's time.

12 I don't think Ms. Jimenez has a case here. Why don't
13 you just stick with your false arrest claim, if you have one,
14 on Patricio's behalf. I don't know what your problem is with
15 respect to Maribel. What is the big claim? That you don't
16 think she was given an interpreter for long enough?

17 MR. MOUTON: Your Honor, I can tell you the Court has
18 already addressed this issue in the matter of Loeffler, which
19 is cited in my response to the Mount Sinai defendants' case.

20 THE COURT: I will go look at your letter for a
21 minute. Just don't say another word until I can look up what
22 you just said. Meanwhile, in your December 8 letter, that's
23 the one where you cited a whole lot of cases -- and now you are
24 saying which one? Matter of what?

25 MR. MOUTON: It is in Loeffler.

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1 THE COURT: I clearly can't hear you because I can't
2 find that case. Could you spell the word you are saying?

3 MR. MOUTON: L-o-e-f-f-l-e-r.

4 THE COURT: You are saying it is in this letter.

5 MR. MOUTON: It is. It is on page 2. There is a case
6 which says that --

7 THE COURT: Surely. It should say Loeffler. That's
8 what it should say. Does it?

9 MR. MOUTON: Yes.

10 THE COURT: I see it. Loeffler v. Staten Island,
11 Second Circuit 2009. It says, according to your letter,
12 deliberate indifference -- let's start earlier. "Intentional
13 discrimination does not require personal animosity or ill will.
14 Rather, intentional discrimination may be inferred when a
15 policymaker acted with at least deliberate indifference to the
16 strong likelihood that a violation of a federally protected
17 right will result."

18 Here's the Loeffler case: "Deliberate indifference
19 can be shown when an official who at minimum has authority to
20 address the alleged discrimination and institute corrective
21 measures on the recipient's behalf, has actual knowledge of
22 discrimination in the recipient's programs and fails adequately
23 to respond."

24 OK. I see the quote, but I don't know what it has to
25 do with this case. What is the alleged knowledge of

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1 discrimination in the recipient's programs that the hospital
2 failed to respond? What are you talking about?

3 MR. MOUTON: Yes, your Honor.

4 So just a little background on the Loeffler case.

5 THE COURT: I think you need a little background on
6 this case. I'm sorry. This case just doesn't sound like
7 either a case or a federal case. You are tenaciously holding
8 on to something that just is no harm, no foul. I just don't
9 know what your problem is.

10 Why don't you start from the beginning. What happened
11 to Ms. Jimenez that makes you think you should be in this
12 federal court on this case? What happened to her?

13 MR. MOUTON: For approximately five hours while
14 Ms. Jimenez was at the hospital, they refused to provide her
15 with an interpreter.

16 THE COURT: Who refused?

17 MR. MOUTON: The employees at the New York City Health
18 and Hospitals Corporation, HHC, and the Mount Sinai Hospital
19 Group as well.

20 Ms. Jimenez during that time was provided with an
21 interpreter, but only for two minutes of time. That was via a
22 phone, which goes against the Health and Hospitals rules and --

23 THE COURT: Who provided this interpreter?

24 MR. MOUTON: HHC did, New York City Health and
25 Hospitals Corporation. They did that for two minutes when they

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1 should have provided her with a face-to-face interpreter.

2 Not only that, but going back to the Loeffler case,
3 which had a similar situation, where for a period of time
4 before an interpreter was provided, the Court said, look, you
5 might have provided that person with an interpreter at some
6 particular point, but before that you refused to provide them
7 with an interpreter, and for those reasons there is a
8 violation.

9 THE COURT: Violation of what?

10 MR. MOUTON: A violation of their federally protected
11 rights.

12 THE COURT: What kind of case? Is Loeffler a 1983
13 based on solely on the failure to provide an interpreter?

14 MR. MOUTON: A sign language interpreter was not
15 provided to someone in that particular case until later on
16 during his treatment.

17 THE COURT: I know. What is the cause of action?
18 During his treatment? He is a patient at the hospital?

19 MR. MOUTON: Yes, your Honor.

20 THE COURT: What is the cause of action?

21 MR. MOUTON: I believe it was Title VII, if I am not
22 mistaken.

23 THE COURT: Title VII isn't Title VI.

24 MR. MOUTON: Let me give my clerks the citation. It's
25 582 F.3d 268.

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1 If I may, your Honor, I cited Kumantaros v. City of
2 New York, which is on page 1 at the bottom, which says that
3 Title VI and Title VII are analyzed in the same manner.

4 THE COURT: I saw that.

5 MR. MOUTON: So any case law would correspond to this.

6 THE COURT: But that is not right, because Title VII
7 has a private right of action. Title VI may not.

8 MR. MOUTON: Again, that's incorrect that that is
9 there no private right of action. There absolutely is. There
10 is no private right of action under Section 602, but under
11 Section 601 of Title VII --

12 THE COURT: I thought were you proceeding under 602.

13 MR. MOUTON: No, your Honor. Under 602 --

14 THE COURT: I thought you were proceeding under 602.

15 MR. MOUTON: Under 602 it allows HHS to develop rules
16 and mandates and policy that hospitals have to adhere to.

17 THE COURT: Right.

18 MR. MOUTON: Under those guidelines, they issued
19 Federal Register Rule 65 247, 80875. Under that rule, or that
20 mandate, the hospital as well as any other, in this case New
21 York City HHC, and the Mount Sinai Group, they would have had
22 to have provided face-to-face interpreters for my client unless
23 there was an emergency situation, and in that case they could
24 have provided a telephone.

25 We have cited disparate impact, which can be used to

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1 show that there was an intentional violation in this particular
2 case.

3 THE COURT: What are you talking about? What
4 disparate impact?

5 MR. MOUTON: In this case, we have a situation where
6 the hospital is located in a heavily populated area with
7 Spanish-speaking persons.

8 THE COURT: Yes.

9 MR. MOUTON: They knew that. Because of that they
10 knew that they should have provided face-to-face interpreters
11 at their hospital and they didn't. That impacts anyone who
12 comes into that hospital who is not English proficient and
13 speaks Spanish.

14 For those reasons it is our belief, and because they
15 have a policy, and actually HHC has a policy that's posted on
16 their website where they only provide Spanish interpreters
17 during business hours, and they provide nothing outside of
18 business hours. That goes directly against the rules that are
19 provided by HHS.

20 So we have not only shown that there is an intentional
21 violation, because they didn't provide an interpreter to her
22 and let her participate in the services of the hospital,
23 provided she wasn't able to participate in the SAVI program.

24 THE COURT: What is that acronym.

25 MR. MOUTON: Sexual assault and violence program, that

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1 she was forced to participate in, that she was forced into
2 contact with the criminal justice system. For all those
3 reasons, that could be used to show that there was an
4 intentional violation.

5 THE COURT: What was she doing at the hospital for
6 five hours?

7 MR. MOUTON: She was at the hospital because she
8 passed out in her bathroom and she believed that she was
9 assaulted by her husband. They tested her. It was clear to
10 them that she was suffering from diabetes, but they still
11 referred her to the SAVI program. During the entire time,
12 except for two minutes, she wasn't provided an interpreter.
13 She doesn't speak any English. She wasn't able to participate
14 at all.

15 THE COURT: In Loeffler there was an ADA claim,
16 Americans with Disabilities Act claim. That's it. ADA.

17 MR. MOUTON: I would point out, your Honor, also there
18 is case law that says ADA claims and Title VI claims are
19 decided in the same manner.

20 THE COURT: I know. But where is the case that says
21 there is a private right of action under Title VI? Your
22 adversary says there isn't.

23 MR. MOUTON: In my first page, the remedies available
24 in a private right of action under Title VI are coextensive
25 with those under Title I of ADA and Section 504 of the

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1 Rehabilitation Act and that's Barnes v. Gorman.

2 THE COURT: Which is the Supreme Court case.

3 So, Mr. Catalano, this sentence says, citing a Supreme
4 Court case, the remedies available in a private right of action
5 under Title VI are coextensive with those under Title II of the
6 ADA and 504 of the Rehabilitation Act.

7 I can now ask my clerk to look that page up to see if
8 it's true. How could you write me that there is not private
9 right of action if the Supreme Court says so?

10 MR. CATALANO: I wrote there wasn't a private action
11 under based upon the language discrimination. If there is
12 intentional discrimination, there would be a private right of
13 action.

14 The argument they are making is this hospital was
15 located in Harlem. Harlem has a lot of Hispanic people.
16 That's discriminatory impact.

17 What the Supreme Court held in Alexander v. Sandoval
18 was exactly that. In that case there was no driver's test in
19 Spanish, and they brought an action based upon that. The
20 Supreme Court said, no, that's disparate impact. There's no
21 cause of action.

22 The regulation Mr. Mouton is citing was 2000. This is
23 2001. I also cited a case, the Perdide v. Page, which is a
24 California case, but it is exactly the same situation, failure
25 to provide an interpreter. In that case the disparate impact

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1 is what's not cognizable according to the Supreme Court.

2 Of course, that's the more complicated argument. Our
3 main argument really is there was no interpreter needed. In
4 the City of New York, the city's required to have an
5 interpreter in the emergency room. This thing happened
6 Christmas night three o'clock in the morning. My volunteer was
7 walking up at 2 o'clock in the morning, rushed to the hospital,
8 got there at 3 o'clock in the morning. Was she supposed to
9 bring an interpreter with her? The interpreter is always with
10 the emergency room.

11 THE COURT: Now you lost me. You said there's always
12 supposed to be an interpreter in the emergency room. Was there
13 one?

14 MR. CATALANO: Yes.

15 THE COURT: You just said no. He said there was one
16 on the phone for two minutes.

17 MR. CATALANO: That's what I mean. There was a phone
18 there. That is not our job, your Honor. We are volunteer
19 service.

20 THE COURT: I thought you just said the hospital was
21 required to have one available in the emergency room at all
22 times? Didn't you say that?

23 MR. CATALANO: I did, your Honor. But they did it by
24 phone.

25 THE COURT: Which is it? Are they required to have

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1 one present in the emergency room at all times?

2 MR. CATALANO: In my own opinion, your Honor, it
3 doesn't matter. I am just reading from the statute.

4 THE COURT: What statute?

5 MR. CATALANO: It is in a footnote of my letter.
6 Footnote 3.

7 THE COURT: Yes.

8 MR. CATALANO: The immediate provision of
9 interpretation services. What does that mean? Does that mean
10 by phone or face to face? I don't know.

11 MR. MOUTON: Your Honor, if I may.

12 MR. CATALANO: My situation is we are a volunteer
13 service. People are at home. My volunteers are at home
14 sleeping until they get a phone call from the emergency room
15 that someone has complained about being sexually abused. My
16 client then goes down there by car service.

17 THE COURT: Who is your client?

18 MR. CATALANO: Mount Sinai operates the SAVI program,
19 Sexual Assault Violence Intervention program. That is our
20 program.

21 THE COURT: Who is your client?

22 MR. CATALANO: Mount Sinai.

23 THE COURT: Your client isn't a volunteer service.

24 MR. CATALANO: Yes, your Honor. SAVI is a
25 volunteer -- Mount Sinai is --

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1 THE COURT: Mount Sinai is a big hospital.

2 MR. CATALANO: It is.

3 THE COURT: It is not a volunteer service.

4 MR. CATALANO: Ms. Cohen, the woman who went down
5 there, as you previously held in your decision, was a
6 volunteer. She works as a volunteer.

7 THE COURT: She does, but you represent Mount Sinai.
8 Mount Sinai has an obligation under this board of health rule
9 to immediately provide interpreting services for
10 non-English-speaking residents in all hospital emergency rooms.
11 They certainly didn't do it immediately.

12 MR. CATALANO: This is not a Mount Sinai emergency
13 room. This is a city hospital emergency room.

14 THE COURT: Oh.

15 MR. CATALANO: She goes to a city hospital. We
16 provided services to the city hospital. The only services we
17 provide are volunteer women. She gets a call 2 o'clock in the
18 morning.

19 THE COURT: So she's never at Mount Sinai?

20 MR. CATALANO: No one's at Mount Sinai.

21 THE COURT: Oh.

22 MR. CATALANO: She comes from her house at 2 o'clock
23 in the morning. She gets to the city hospital, Harlem
24 Hospital, at 3 o'clock in the morning. She didn't bring an
25 interpreter, because everyone knows that every emergency room

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1 has an interpreter.

2 THE COURT: It didn't?

3 MR. CATALANO: It did have an interpreter. The city
4 had supplied an interpreter.

5 THE COURT: You mean the two minute thing?

6 MR. CATALANO: I don't know if it was two minutes or
7 not.

8 THE COURT: Let's assume it was, but it was hours
9 after she came there.

10 MR. CATALANO: Your Honor, I have an advocate report
11 form. My client sat down with this woman with an interpreter,
12 on the phone albeit, and I have a whole report about everything
13 she says.

14 THE COURT: Right. He says she was there for hours
15 before even the two minutes kicked in.

16 Didn't you say that, Mr. Mouton?

17 MR. MOUTON: Yes, your Honor. And after those two
18 minutes --

19 THE COURT: What time did she arrive?

20 MR. MOUTON: She arrived early in the morning. I
21 believe was 2 a.m.

22 THE COURT: When did she get the two minutes?

23 MR. MOUTON: She got the two minutes hours later.

24 THE COURT: Does the report say what time?

25 MR. CATALANO: 2:59. Well, the client's time of

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1 arrival was 2:59 a.m., and I am not sure when my person got
2 there.

3 THE COURT: He's saying it's hours.

4 MR. MOUTON: Your Honor, the issue here is that Mount
5 Sinai has these satellite programs at various hospitals. I
6 don't know if there is an agreement between Mount Sinai and New
7 York City HHC to provide interpretation services, but if Mount
8 Sinai has these satellite services and they are located in this
9 Hispanic neighborhood, they should be providing interpretation
10 services pursuant to the HHS regulations, unless there is some
11 sort of on agreement where they are going to be indemnified by
12 the city.

13 THE COURT: Is this an HHS regulation or a city
14 regulation? It says, his letter, "The board of health shall
15 require the immediate provision of interpretation services."

16 MR. MOUTON: No, your Honor. It is in the Federal
17 Register --

18 THE COURT: This footnote is whose regulation, the
19 quote. Sat.

20 MR. CATALANO: That is from the city charter, the
21 administrative code.

22 MR. MOUTON: I'm citing a federal rule that is
23 promulgated by HHS.

24 THE COURT: What does that one say. Is that in your
25 letter?

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1 MR. MOUTON: It says that health care organizations --
2 yes, your Honor, on page 2.

3 THE COURT: Which letter? You have two letters.

4 MR. MOUTON: I apologize. The December 8 letter, on
5 page 2. It says, "Health care organizations must offer and
6 provide language assistance services at no cost to each
7 patient" --

8 THE COURT: Let me find it. Go ahead.

9 MR. MOUTON: -- "with limited English proficiency at
10 all points of contact in a timely manner during all hours of
11 operation."

12 It says that that this is mandated for all recipients
13 of federal funds. It goes on to define what it believes that,
14 how they should provide these interpretation services.

15 THE COURT: He's saying he is not a recipient of
16 federal services.

17 MR. MOUTON: The SAVI program might not directly
18 receive funds but Mount Sinai does, and Mount Sinai controls
19 the SAVI program. It is not a separate division. The statute
20 defines a program as a business that operates a health care
21 organization. That's what it defines it as, not as some
22 separate program that they offer or anything like that. It's
23 whether or not the business that runs that program is a health
24 care organization.

25 MR. CATALANO: Your Honor, we are not providing heath

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1 care in this instance, as you previously held. We are
2 providing a person, a woman, a volunteer who comes in, and
3 she's there to hold a person's hand to give them advice as to
4 what they need to do in terms of obtaining more services or
5 counseling, that they have a right to bring charges, things
6 like that. That program is mandated by the city. So we are
7 not providing any medical care. It would be unrealistic --

8 THE COURT: Basically you are saying you are not a
9 health care organization, but he's saying Mount Sinai is a
10 health care organization.

11 MR. MOUTON: Your Honor, if I may, on page 1, I
12 actually have the definition of it. It's in paragraph 2 of the
13 December 8 letter. It says, "A program or activity is defined
14 as an entire corporation, partnership, or other private
15 organization or an entire sole proprietorship which is
16 principally engaged in the business of providing health care."
17 That's 42 U.S.C. 2000d-4A. That is exactly what Mount Sinai
18 is.

19 THE COURT: Mount Sinai is, SAVI isn't. You are
20 saying it doesn't matter. SAVI is just a program operated by
21 Mount Sinai.

22 MR. MOUTON: Yes, your Honor.

23 MR. CATALANO: Is everyone supposed to bring an
24 interpreter? Should doctors have their own interpreter or
25 nurse?

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1 THE COURT: No. As it relates to the emergency room,
2 there should be somebody on duty all the time, just like there
3 is a doctor on duty, a resident on duty, an intern on duty. I
4 guess there has to be an interpreter on duty in every emergency
5 room.

6 MR. CATALANO: Exactly, your Honor. But there was.

7 THE COURT: No, there wasn't. I don't know what time
8 this two minutes occurred. She got there at 2:59. I don't
9 know. He says hours. Let's say that this interpreter kicked
10 in at 5 a.m. She is in the hospital emergency room for two
11 hours unable to communicate.

12 MR. CATALANO: That has nothing to do my client.

13 MR. ZIMMERMAN: If I may, your Honor.

14 THE COURT: Go ahead, Mr. Zimmerman.

15 MR. ZIMMERMAN: If I may, your Honor first of all, I
16 would like to point out in the original complaint, part of the
17 claim was that the interpretation services provided were
18 inadequate. In fact, CyraCom, the company that provided those,
19 was a party before your Honor and you dismissed it.

20 If I could take a step back, now very in the weeds on
21 the facts of this case, which since we are at the pleading
22 stage, we have only given the Court -- the first translator in
23 this case was plaintiffs' own daughter who allegedly informed
24 the EMTs that she had been assaulted by her husband when he
25 came home drunk. The EMTs wrote that in their ambulance call

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1 report. That information was passed along the chain of
2 command.

3 My specialty, as you know, is false arrest cases. I
4 am not prepared to argue whether there is a private right of
5 action for a violation of the New York Administrative Code,
6 etc. If Mrs. Jimenez has a claim for the negligent provision
7 or the failure to provide, the negligent disclosure, I think
8 that claim should be in state court.

9 THE COURT: I know you do. But he thinks there is a
10 federal claim under Title VI and under the Affordable Care Act,
11 and he gives all these cases of why the Supreme Court and other
12 courts have said so.

13 MR. ZIMMERMAN: I would suggest in response to his
14 letter he suggests that it would be inefficient, because if he
15 filed a separate federal action, it would simply be
16 consolidated with this one.

17 I would disagree. There is really no commonality of
18 the facts and circumstances. So, if he has a legitimate claim,
19 I would urge him to file a complaint on behalf of Ms. Jimenez
20 that makes those claims, and we can move ahead with the false
21 arrest claim in this case that is really what we are all here
22 for.

23 THE COURT: Let me understand. You are saying if he
24 has a federal case for Mrs. Jimenez under these federal laws,
25 Title VI or the Affordable Care Act, or both, you are saying

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1 that is really a separate lawsuit. That is her issue, that is
2 not the false arrest case against Mr. Jimenez, and they are
3 really not one case.

4 MR. ZIMMERMAN: Absolutely, your Honor.

5 THE COURT: She really has her own case, her own
6 problem. It is either viable under the law or not viable. But
7 it's really not related to the alleged false arrest for him.

8 MR. ZIMMERMAN: Absolutely, your Honor. In fact, the
9 claims are --

10 THE COURT: I guess the only way it's related is if
11 she could have told the hospital that he didn't do anything.

12 MR. ZIMMERMAN: But the police interviewed her.

13 THE COURT: What?

14 MR. ZIMMERMAN: The police interviewed her several
15 weeks after the hospital. In fact, the detective that was just
16 added was only present for that interview. He translated.
17 And, again, allegedly she told them that she had been
18 assaulted.

19 The false arrest, the allegedly false arrest was based
20 on a chain of information that only partially included the
21 hospital. The police didn't make the arrest until long after
22 she had been released from the hospital. So there may be some
23 overlap in the early part of the case, but the legal issues are
24 completely different, divergent as we can --

25 THE COURT: They are. Your issue is going to be was

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1 there probable cause for the arrest. If she said after being
2 released from the hospital, "He assaulted me," then one would
3 think there is probable cause, and that's it for the false
4 arrest case and we move on to this other case.

5 MR. ZIMMERMAN: In fact, if plaintiffs' allegations
6 are -- I think his case contradicts itself in a certain sense,
7 because if the allegations about the hospital fabricating
8 records is true, then the police again have probable cause
9 because they are acting on information that they are entitled
10 to accept as reliable.

11 So I don't think that it helps the plaintiffs very
12 much to lump these two cases together. I certainly would
13 rather proceed with the case I understand the law in and am
14 able to argue to your Honor. We are ready to answer the
15 complaint on those charges and proceed.

16 THE COURT: That is another good thought, Mr. Mouton.
17 Why isn't her case -- her case, being deprived of language --
18 by the way, my clerk did look up the Barnes case, which is the
19 Supreme Court case, Barnes v. Gorman, and it would be a private
20 right of action, but only for intentional conduct.

21 MR. MOUTON: Yes, your Honor.

22 THE COURT: The question is, is this going to be
23 provably intentional? Even so, this is a different case. This
24 is a case about either they did or didn't fail to comply with
25 the law of providing an interpreter in the emergency room.

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1 Either it was or wasn't intentional. It really doesn't have
2 anything to do with a false arrest case for Mr. Jimenez.

3 MR. ZIMMERMAN: If I make one other additional point,
4 your Honor, the existence of 1988 and the attorney's fees under
5 the 1983 action is another particular reason that this
6 complicated issue should be separated. At the very least, if
7 they are allowed to proceed together, I would ask that the
8 Court order Mr. Mouton to bill separately for them.

9 THE COURT: I don't think they should proceed
10 together. I also feel like I have two different cases. That's
11 why my head was spinning a little bit. I was reading records
12 looking at a false arrest case, and suddenly I am in the weeds
13 of a case about whether you have to provide an interpreter or
14 not and under what federal statute and whether it's intentional
15 or can it be disparate impact. Apparently it can't be
16 disparate impact. It has to be intentional discrimination.

17 I don't know why, if she was deprived of an
18 interpreter for a couple of hours on Christmas Day or Christmas
19 Eve, why you think that's because she was Hispanic. If they
20 didn't have their interpreter there at all, that would apply to
21 anybody who walked into the ER. I don't know why you think she
22 was singled out. I guess you think it's because the area had a
23 high Hispanic population, so everybody knew that people were
24 going to walk who were going to speak Spanish, even though she
25 comes in apparently with a daughter who acts as an interpreter.

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1 I can't try the case now. I think that's what we are
2 kind of doing. I think Mr. Zimmerman's last point is right. I
3 am not going to allow this third amended complaint to be filed.
4 It can't be filed as of right.

5 I did not issue an order permitting this third amended
6 complaint. I am striking this third amended complaint. You
7 can bring a lawsuit on her behalf. Buy a docket number, bring
8 the lawsuit, do what you want with it. It is a different
9 lawsuit than the false arrest claim. I give the limited right
10 for leave to amend. You did something different. That is
11 fine. It is a separate lawsuit.

12 MR. MOUTON: Your Honor --

13 THE COURT: That is my ruling today, Mr. Mouton. You
14 are going to have to live with it. Bring a lawsuit for
15 Mrs. Jimenez for the depravation of an interpreter, and we'll
16 see how it plays out over the months and years ahead.

17 Let's move on with my very straightforward false
18 arrest case.

19 MR. MOUTON: Certainly, your Honor.

20 THE COURT: I am not so sure you were right that you
21 were right when you predicted, so I have to bring a separate
22 case, it's only going to get consolidated it is all going to be
23 one case, and we are going to be spinning our wheels. I am not
24 sure that is right.

25 MR. MOUTON: Well, your Honor, I reviewed the

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1 reasoning behind things being marked related. I will have to
2 plead almost exactly the same facts in that case, except for a
3 few paragraphs. I think I will to mark it as being related.

4 THE COURT: You will do what you have to do. But the
5 Court has its own rules.

6 MR. MOUTON: Certainly, your Honor. The only thing I
7 would ask, your Honor, is that I be able to transfer the state
8 causes of action to that case because they are all part of the
9 same facts.

10 THE COURT: Wait. What are you talking about? What
11 state causes of action against whom on behalf of what
12 plaintiff.

13 MR. MOUTON: Certainly, your Honor. In the complaint
14 I have some state causes of action.

15 THE COURT: On behalf of Maribel?

16 MR. MOUTON: On behalf of Maribel, yes, your Honor.

17 THE COURT: The Maribel lawsuit is a lawsuit I haven't
18 seen before. You will write your complaint in Maribel.

19 MR. MOUTON: I already thought in this particular case
20 there was already --

21 THE COURT: The third amended complaint is completely
22 stricken now.

23 MR. MOUTON: Yes. But before that, your Honor, I had
24 a state law claim.

25 THE COURT: They were state law only. I had no

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1 federal jurisdiction over those. Those are gone from my false
2 arrest case. Whenever you bring the case on behalf of Maribel,
3 this brand-new case you can plead federal and state claims, of
4 course. Bring any claims you want.

5 MR. MOUTON: I guess the only issue is that the time
6 to write that lawsuit has passed, so if I remove them from this
7 case and then bring them in another case, it will be too late.

8 THE COURT: Not necessarily. You may have tolling
9 from the time that you originally brought them. That is an
10 argument that will have to be briefed before whatever judge has
11 the Maribel case.

12 MR. MOUTON: Yes, your Honor.

13 THE COURT: That's what is going to happen. For the
14 false arrest case that I have, do you need to file a second
15 amended complaint, that's where I'm lost? On behalf of
16 Patricio Jimenez, was there anything to change, or we're fine
17 with the original complaint.

18 MR. ZIMMERMAN: I think we are talking about the
19 second amended complaint now, which was superseded by the
20 third. The second amended complaint -- my big request is that
21 all these health care defendants, the New York HHC, all of
22 those --

23 THE COURT: That's the other case.

24 MR. ZIMMERMAN: -- be taken out.

25 THE COURT: I agree.

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1 MR. ZIMMERMAN: -- of Patricio's claims.

2 THE COURT: I agree. His case is a straightforward
3 false arrest case.

4 MR. ZIMMERMAN: We should have a complaint that
5 pleads --

6 THE COURT: That's what I think, too. That is what I
7 am saying. We need an amended complain in the Patricio action,
8 and we need a new complaint in the Maribel action. Where
9 things fall out on the statute of limitations they do, but it
10 is not a foregone conclusion that it is untimely, because it
11 may relate back.

12 MR. MOUTON: The one thing.I wouldn't point out, your
13 Honor, is that the city defendants have alleged that the city
14 is no longer a proper defendant in this case, but there are
15 respondeat superior claims against the City of New York that
16 are viable in this case, and they are, and the city is a proper
17 defendant in this case.

18 THE COURT: In the state law claims for Patricio.

19 MR. MOUTON: Yes, your Honor.

20 MR. ZIMMERMAN: I concede that, your Honor. That was
21 an error on my part.

22 THE COURT: OK. He agrees with you. I need a new
23 complaint on the false arrest case. I need a new complaint
24 entirely on the Maribel case. If you want to mark it related,
25 that is up to you. I am not saying whether I will take it.

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1 There's lots of steps now.

2 MR. MOUTON: Yes, your Honor. I will review the rules
3 again. If it is, I will mark it. If it's not, I won't mark it
4 as well.

5 THE COURT: That's fine. I am not getting involved in
6 the sanctions part of the case.

7 MR. CATALANO: Your Honor, can I assume that Mount
8 Sinai will be out of this case?

9 THE COURT: I don't think they should be in the false
10 arrest case. Do you?

11 MR. MOUTON: I don't think they will be. I will
12 prepare another complaint tomorrow and obviously I will serve
13 it.

14 THE COURT: That's right. They are not in the false
15 arrest.

16 MR. CATALANO: There's this mediation coming up also.
17 I want to make sure we get out of that.

18 THE COURT: I think we're set for today. You don't
19 have to answer, the third amended complaint is stricken. I
20 will issue a one-line order doing it.

21 MR. MOUTON: Do I file a fourth amended complaint.

22 THE COURT: No. The third amended complaint is
23 stricken, the second amended complaint is stricken. It would
24 be a new second amended complaint in the false arrest case. I
25 will issue an order saying that so you know that. It will be

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1 on the docket.

2 MR. ZIMMERMAN: The mediation office asked us to bring
3 to your Honor's attention the schedule because they felt
4 compelled to schedule a mediation even though this dispute was
5 going on. I guess we need to push the mediation date back
6 since we have now pushed the whole case another month without
7 an answer.

8 THE COURT: I don't know what the answer has to do
9 with the mediation. You know the facts of this case. Go
10 mediate.

11 MR. ZIMMERMAN: The question was because they were
12 trying to bring Mount Sinai into the mediation.

13 THE COURT: The mediation is the false arrest case.

14 MR. ZIMMERMAN: All right.

15 THE COURT: I will issue a short order.

16 MR. ZIMMERMAN: I appreciate it. Thank you very much,
17 your Honor.

18 MR. CATALANO: Thank you, your Honor.

19 THE COURT: Do you have a scheduling order in place in
20 the false arrest?

21 MR. MOUTON: We do.

22 MR. ZIMMERMAN: We do except that I will need a new
23 date to answer based on when this.

24 THE COURT: You will work that out. But the rest of
25 the schedule should be able to stand?

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1 MR. ZIMMERMAN: I believe so, your Honor.

2 MR. MOUTON: Yes, your Honor.

3 THE COURT: All right. Good. Thank you.

4 (Adjourned)

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